IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 55 OF 2002

Shri Pandurang Sazo Gaonkar,
s/o Szao Gaonkar, r/o
Chorao, Ilhas, Goa. ...Petitioner.

Versus

1. Shri Adolfo Gomes,

2. Smt. Hilda Perina Rosaline,

3. Shri Rodolfo Joaquim Tiago-
Sacramento de Santa Cruz
Gomes (since deceased, represent-
ed through L.Rs.,

3a. Mr. Rene X. Gomes,

b. Mr. John Santan Gomes,

4. Mrs. Hilda Terezinha
Verodina Prazeres Gomes,

5. Shri Romco Lamarhino
Gomes azlias Romeo Gomes,

6. Mrs. Ana Belisa Paiva,

7. Shri Joao Santan Gomes
(since deceased, represented
through L.Rs.),

7a. Mrs. Maria Piedade Almeida,

b. Mr. Justino Sam Gomes,

c. Mr. Joel Schubert Gomes,

8. Mrs. Mareia Maria Piedade
Almeida,

9. Shri Antonio Rosario Isidoria
Gomes (since deceased,
represented through L.Rs.,

9a. Mrs. Maria Olivetti Barretto,
Gomes,

b. Mr. Malcom Cruz Gomes,

c. Lincon Gomes,

10. Mrs. Maria Olivetti Barretto,

11. Mr. Antonio Oliveira Gomes
alias Antonio Oliveio Gomes,

12. Mrs. Jessica Almeida,

13. Mr. Juliao Martires
Gomes,

14. Mr. Roldeo dos Martires Gomes,
(since deceased, rep. through
L.Rs.)

14a. Mr. Delia M.D. Gomes,

b. Mr. Royston X.Gomes,

c. Mr. Regan W.Gomes. all
r/o c/o Sanrit Hotel,
Opp. Old Railway Station,
Margao, Salcete, Goa. ... Respondents.

Mr. A. Mashelkar, advocate for the petitioner.

Mr. E. Furtado, advocate for the respondents.

CORAM : F. I. REBELLO, J.

DATE : 25th July, 2003.

ORAL JUDGMENT

Heard parties. The trial Court by the impugned Order dated 31st August, 2001, rejected the application for execution on the ground that as the compromise terms contained no provision for execution of the sale deed, the decree could not be executed. That is the subject-matter of the present challenge before this Court.

2. On behalf of the petitioner, it is contended that the petitioner had complied with the compromise terms by paying all the amounts in the year 1987. The petitioner has, thereafter, given notice to the respondents to execute the sale deed. On failure to do so, the petitioner took

proceeding in execution being Execution Application No.5/99/B. The learned trial court based on the material placed before it, including receipts, held that the petitioner had been able to prove that the amounts had been paid. However, as there was no provision for execution of the sale deed in the compromise terms, it rejected the relief. Consequently, the present revision application.

3. On behalf of the petitioner, learned counsel contends that such a decree could be executed. Reliance was placed on certain judgments which will be adverted to in the course of the discussion.

4. On the other hand, on behalf of the respondents, learned counsel contends that the consent terms provided for payment. In the instant case, no payments have been made, nor any enquiry conducted by the learned executing court and, therefore, the findings recorded in the order that payments have been made will have to be reversed and opportunity will have to be given to the respondents if the court comes to the conclusion that a decree as capable of execution.

5. The compromise terms provide the manner in which the balance instalments of the sale price have to be paid. On the date of signing of the compromise terms, there is a term in the compromise terms that the amount set out therein has been paid. Once that be the case, and once the

judgment-debtor had agreed to sell to the decree-holder the land at the price set out therein, and on such payment, on failure to execute the sale deed, it would be open to the court to entertain the application for execution and thereafter direct the judgment-debtor to enter into the sale deed or take such other steps to execute the sale deed. The issue regarding compromise terms in which there was no clause for enforcement had come up for consideration before another learned single Judge of this Court in the case of **Zoiba Sakroba Rane Sardessai (since deceased) through L.Rs. vs. Abasaheb Sakroba Rane Sardessai (since deceased) through L.Rs. & Ors.,1997 (1) GoaL.T. 253.** The learned Judge of this Court placing reliance on another judgment of the Kerala High Court in the case of **V. K. Sreedharam vs. Bhaskaran, AIR 1986 Ker. 49,** held that on performance of the conditions the party can apply for getting conditions enforced through the Court by execution. I am in agreement with the view expressed by the learned Judge and in that light of the matter it will have to be held that if otherwise the decree-holder has complied with the other terms of the compromise decree, there is jurisdiction in the court to proceed with the execution and order the sale deed to be entered into.

6. However, at the same time, if there are objections raised by the judgment-debtor, those objections will have to be heard and decided before the Court passes the

order directing the judgment-debtor to enter into the sale deed.

In the light of that the following order:-

The Revision Application is allowed, the impugned Order dated 31st August, 2001 is set aside. The matter is remanded to the trial Court in terms as aforesaid with a direction to hold enquiry if objection is raised by the judgment-debtor, regarding non-performance of the consent terms of the decree-holder. The revision stands disposed of accordingly.

F. I. REBELLO, J.

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